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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 28, 2014

4:34 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Telephone Conference, on the Record, Regarding Mediation and
Discovery Matters in Reference to the Reed Evidentiary Hearing.

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A P P E A R A N C E S :

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ALSO PRESENT TELEPHONICALLY:

FRANK REED, PRO SE

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: -- Glenn. We're on the record in
3 Residential Capital, number 12-12020. This telephone hearing,
4 which is on the record, is being held in connection with the
5 contested matter concerning the claims filed by Frank and
6 Christina Reed.

7 The claims are the subject of two orders of the Court,
8 one order, the first of them, sustaining, in part, and
9 overruling, in part, the ResCap borrower trust objection to the
10 Reed's claims. That order was entered on July 11th, 2014. The
11 second order was the order establishing procedures for trial of
12 the contested matter, and it was entered on July 22, 2014.

13 Since those orders were entered, I received two
14 letters, one from Frank Reed -- it's ECF docket 7302; it's a
15 letter dated July 23, 2012 -- and a response, which is the
16 letter from Norman Rosenbaum, dated July 25th, 2014, and it's
17 ECF 7303.

18 Could you make your appearances, for the trust?

19 MR. WISHNEW: Good afternoon, Your Honor. Jordan
20 Wishnew, Morrison & Foerster, for the ResCap borrower claims
21 trust.

22 THE COURT: Okay.

23 MR. WISHNEW: On the phone with me is my co-counsel,
24 Barbara Hager, from the firm of Reed Smith.

25 THE COURT: Okay.

RESIDENTIAL CAPITAL, LLC, ET AL.

5

1 MS. HAGER: Good afternoon, Your Honor.

2 THE COURT: Thank you.

3 And Mr. Reed?

4 MR. REED: Your Honor, Frank Reed here --

5 THE COURT: Okay.

6 MR. REED: -- plaintiff -- or creditor, pro se.

7 THE COURT: All right. Mr. Reed, your letter was the
8 first that triggered this hearing. There are two aspects to
9 that -- well, or one, where you refer to the unsuccessful
10 settlement meeting which I had directed occur, and you've
11 requested mediation. The response from the trust deals with
12 the mediation request and also deals with discovery issues.

13 Let me hear you first, Mr. Reed.

14 MR. REED: Your Honor, I -- as I put in my letter,
15 probably more articulate than I can here orally, I felt that
16 there was a good-faith effort on our part. I know there was
17 great expense and energy put forth to put together proofs in a
18 more, I guess, recognizable form for the trust, culling from
19 the documents that were submitted, so that there could be an
20 intelligent discussion about the damages. And I got the
21 impression that those were not considered, that it was issues
22 of law that I felt -- I don't want to provoke anyone here, but
23 I felt that were perhaps misstated, according to my
24 understanding of them, and therefore the negotiations weren't
25 happening in a productive way. And they were maybe

1 misunderstood by the other side, but at worst, misstated, and
2 that the -- as I said, I don't know if this was entered into in
3 good faith.

4 And I think I put in my letter that I'm trying to do
5 whatever I can to do as the Romans do, I guess you would say,
6 in a common fashion, in this environment. And if I
7 misunderstand something, or if I'm misreading a situation, I
8 don't know what to say, and that's why I asked for the
9 mediation, because a third party or an arbitrator, third party
10 neutral, would give me a better sense, perhaps, of what's
11 happening.

12 THE COURT: Mr. Wishnew, do you want to respond?

13 MR. WISHNEW: Sure, Your Honor. Prior to the
14 settlement discussion, I did ask Mr. Reed to give me a
15 calculation of his damages and the basis for his damages. I
16 had an opportunity to review that with our client, the borrower
17 claims trust. And we went into the meeting and opened the
18 meeting explaining why the borrower claims trust was not
19 convinced that there were legal bases for the remaining claims
20 not otherwise expunged through the Court's earlier order.

21 We felt we spent a fair amount of time, operating in
22 good faith throughout the discussion, trying to explain to Mr.
23 Reed what the flaws were, we felt, in the underlying legal
24 theories that remain in dispute. We made settlement offers.
25 They were not consistent with Mr. Reed's value of his claims.

1 And we, at a certain point, were simply talking past one
2 another, and we felt it was productive -- we felt it was best
3 to stop or not proceed any further with the settlement
4 discussion because we were just too far apart in how we valued
5 the remaining claims.

6 The borrower claims trust went into this negotiation
7 hopeful that a resolution could be reached, but we have very
8 strong feelings about the strength of Mr. Reed's claims, or I
9 should say, lack of strength of his claims. And our
10 willingness to settle is reflective of what we think are the
11 strengths and weaknesses of those claims.

12 Again, as I mentioned in our letter -- or as we
13 mentioned in our letter, this was nearly a three-hour
14 discussion. We spent a lot of time with Mr. Reed. We operated
15 the entire time in good faith. But unfortunately, we were not
16 able to come to a mutual understanding.

17 THE COURT: Okay. Mr. Wishnew, would you address the
18 discovery issues?

19 MR. WISHNEW: Certainly, Your Honor. After we got
20 your -- so after the Court's first decision on the merits of
21 the claims, we approached Mr. Reed by e-mail, suggesting a
22 schedule by which the parties could complete discovery of one
23 another on the remaining claims.

24 That was an e-mail, I think, sent out -- that was on
25 July 14th. We met with Mr. Reed three days later on July 17th.

1 And when the settlement discussions concluded, we asked him,
2 okay, do you have any feedback for us on our proposed schedule
3 for discovery. And at that point in time, his answer was: No,
4 I don't have a response right now. I'm still trying to get
5 counsel. I'll let you know in the next forty-eight hours.

6 Fast forward to the following Monday, and that is
7 Monday July 21st, and again, what -- in our initial schedule
8 with Mr. Reed we had proposed that the parties identify their
9 experts and fact witnesses that they intend to offer at trial
10 by Monday, July 21st. We disclosed our single fact witness.
11 And Mr. Reed then sent back an e-mail saying here are my thirty
12 witnesses; twenty-seven fact and three extra witnesses.

13 Given the breadth of Mr. Reed's witness list, we
14 wanted to try and understand the subject matter or topics for
15 which each witness was being offered. And we tried to schedule
16 a mutually convenient time to speak with him and were never
17 able to get that. At a certain point, we said we need to speak
18 with you before noon on Thursday, or we need the Court's
19 assistance to try to help us through this.

20 I'd say Thursday afternoon or -- I'm sorry, Thursday
21 morning, we are informed by Ms. Anderson, in Your Honor's
22 chambers, of the July 23rd letter. We review that, we prepare
23 our response, and then Friday evening, we are then served with
24 a motion for reconsideration of the Court's July 11th decision.

25 I would add also, Your Honor, that at this point,

1 we've identified -- we are two to three weeks into a potential
2 discovery period which is supposed to expire on August 22nd.
3 We've disclosed witnesses. We've sent out document demands and
4 other written discovery, and we're no further than we were
5 earlier in July.

6 So we're mindful of each party having opportunity to
7 take discovery, but we're also mindful that we do have a
8 discovery deadline of August 22nd, and a trial of September
9 15th. So we would like to ensure that this matter is
10 adequately addressed, but at the same time, that the proposed
11 scheduling does not slip too far so that this matter doesn't
12 drag on.

13 THE COURT: Mr. Wishnew, did Mr. Reed identify to you
14 the names and contact information of the fact and expert
15 witnesses?

16 MR. WISHNEW: No, Your Honor, all we have are names at
17 this point.

18 THE COURT: So you have names of the twenty-seven fact
19 witnesses?

20 MR. WISHNEW: Correct, Your Honor.

21 THE COURT: Okay.

22 MR. REED: Your Honor?

23 THE COURT: I'm going to give you a chance --

24 MR. REED: The --

25 THE COURT: Mr. Reed, stop. Stop. I'll give you a

1 chance.

2 What discovery -- did you serve written discovery on
3 Mr. Reed, Mr. Wishnew?

4 MR. WISHNEW: Yes, Your Honor. We served document
5 requests, interrogatories, as well as requests for admissions.
6 Those discovery demands, Your Honor, were sent to Mr. Reed,
7 electronically and by overnight mail, on July 17th.

8 THE COURT: All right. Mr. Reed, do you want to
9 address the discovery issues?

10 MR. REED: Yes, Your Honor. The list is comprised of
11 experts and fact witnesses that are all, again, culled from all
12 the information that was sent there. If I was supposed to give
13 their contact information, I can do that. It's already in the
14 file. Their disclosure does not give me a contact information
15 for their sole witness.

16 I am -- even though I did not agree, necessarily, to
17 what they proposed, I am complying with it. And the last week,
18 when they wanted to talk to me about the witnesses, I think Ms.
19 Hager, who is on the phone, sent me an e-mail about maybe
20 stipulating to certain facts what the witnesses would be
21 discussing. And I called her back about a half a dozen times,
22 and we were playing phone tag. There was no intention to dodge
23 anyone. I would call several times a day; we were just missing
24 each other. And I don't -- there's no intention to obstruct
25 this process.

1 THE COURT: Well, let me ask you this, Mr. Reed --
2 and I will tell you, I cannot conceive of how you could need
3 thirty witnesses on the issues as to which the Court overruled
4 the trust's objections. Can you give me the gist of what you
5 anticipate the witnesses to testify -- I don't mean each one.

6 My concern, in part, Mr. Reed, is from your earlier
7 papers -- when I say your earlier papers, before the Court
8 ruled on the objection to the claims -- you had a very
9 expansive view of what damages you believe you'd be entitled to
10 seek and recover from the trust, at least in terms of having an
11 allowed proof of claim.

12 The Court's ruling, in sustaining, in part, and
13 overruling, in part, the trust's objection, I think,
14 substantially narrows what are the issues that are in play. So
15 it seems to me that whatever damages you would be permitted to
16 seek have to be specifically related to the one property as to
17 which the debtors commenced their foreclosure action.

18 In earlier reading of your papers, your -- what I
19 would refer to as your expansive view of potentially
20 recoverable damages suggested that their action -- that the
21 GMACM action resulted in you losing other business
22 opportunities, other finance opportunities. That's all a
23 nonstarter. So what is it that these twenty-seven fact
24 witnesses, in your view, are going to testify to?

25 MR. REED: Your Honor, I apologize but I didn't hear

1 that last two sentences and you said about the financing and

2 MR. REED: Your Honor, I apologize but I didn't hear
3 that last two sentences and you said about the financing and --

4 THE COURT: Yeah, let --

5 MR. REED: -- other properties.

6 THE COURT: Yeah, when I read your papers before there
7 was a decision, you seemed to be taking the position that you
8 would be entitled to recover damages not limited to the one
9 property as to which GMACM commenced foreclosure but to other
10 business ventures, opportunities, things of that nature, none
11 of which in my view can you recover any damages for.

12 What survives in your lawsuit on several different
13 theories is that GMACM undertook wrongful foreclosure by not
14 giving you the notice required by New Jersey law. They were
15 negligent in doing that. You argue that they breached a
16 contract. That claim only survived because you pointed to the
17 place in their foreclosure pleading where they claim that they
18 owned the note and they were taking the position they didn't
19 own the note.

20 It was in light of the alleged wrongful foreclosure
21 that the Consumer Fraud Act claim survived. Arguably a
22 punitive damage claim survived. But all of that focuses solely
23 upon this one property. I can't conceive of how you could have
24 twenty-seven fact witnesses who would testify with respect to
25 this one property and the alleged wrongful foreclosure action

1 that was commenced. What is it that you think you're going to
2 use twenty-seven witnesses -- fact witnesses to put in proof?

3 MR. REED: Your Honor, I am utterly confused and
4 speechless at this moment regarding the limitation of the
5 damages as I understand them and understood them and how you're
6 articulating it now. And I --

7 THE COURT: Mr. Reed?

8 MR. REED: -- I don't know how to --

9 THE COURT: Mr. Reed, how many of the twenty-seven
10 witnesses do you expect will testify about this one specific
11 piece of property and the wrongful foreclosure action?

12 MR. REED: Your Honor, I'll have to go through the
13 list to see which ones were related to that, to that property.

14 THE COURT: Am I correct that a majority of the
15 witnesses you expected were going to testify about other --
16 I'll just refer to it generally as other business opportunities
17 that you believe you lost because of this?

18 MR. REED: I don't know if the majority are. I don't
19 believe so. I think they're -- the reason the list was so long
20 is because when counsel from the trust objected to my proofs of
21 claim, they had indicated that anything that was in writing or
22 a great amount of what was in writing would possibly be hearsay
23 and I think Your Honor had said something from the bench about
24 whether things would be admissible. And so upon my research, I
25 started to see that, as I think counsel's paper said, "if the

1 person is not there present to speak about it." So there are
2 appraisers regarding my property, realtors regarding my
3 property -- multiple realtors regarding my property, experts
4 about the liability in terms of the foreseeability of damage
5 from the negligence aspects from the industry, from the
6 foreclosure practice industry for the customary practice.

7 But again, Your Honor, I'm very -- I don't know where
8 I disconnect and I ask you to point to what -- where is the
9 limitation and forgive my ignorance but where is it confined to
10 this property? I don't understand that. Where --

11 THE COURT: I've just told you --

12 MR. REED: -- where is that?

13 THE COURT: -- I've just -- well, it should have been
14 evident, but it obviously was not. I'm telling you now that I
15 am not going to permit you to put on evidence relating to other
16 business opportunities, lost or otherwise. What your claims
17 survive with respect to are wrongful foreclosure with respect
18 to this property, if it gives rise to a Consumer Fraud Act
19 claim -- it may and it may not. And if it gives rise to a
20 breach of contract claim, we'll see whether there's a contract.
21 You say there is. The debtor, at least told me there wasn't
22 and then you correctly pointed to the place in their
23 foreclosure complaint where they said there was. But it all
24 relates to this one specific property.

25 To the extent you are arguing that you suffered

1 economic loss with respect to this property, as a result of the
2 debtors' actions, yes, I believe that is a proper subject for
3 this hearing and your effort to recover damages, but that is
4 economic damages relating to this specific property, not to
5 other business ventures known or unknown, imagined or
6 unimagined.

7 This trial relates to this property. If you suffered
8 out-of-pocket loss, I raised questions about this, for example,
9 if you paid an attorney to defend a foreclosure action that was
10 dismissed because it wasn't properly brought, that is arguably
11 damages that you could seek to recover.

12 To the extent that you argue that somehow this
13 wrongful foreclosure action impaired the value of the property
14 in that you suffered a loss, you can seek that, although you
15 still have the property. You didn't lose it. I understand
16 that a successor owner of the note or loan servicer is seeking
17 now to foreclose but --

18 MR. REED: They presented a demand. That is correct.

19 THE COURT: All right. I want to be clear, I'm not
20 precluding you from seeking economic losses that focus -- if
21 you can demonstrate that you suffered economic loss relating to
22 this property as a result of wrongful conduct of the defendant,
23 you can seek to recover it -- by defendant, I'm meaning the
24 debtor -- you can seek to recover it.

25 What I am not going to permit you to do is to try and

1 bring in -- and I read this in some of your earlier papers
2 before I ruled on the objection, that you were claiming that
3 this put a cloud -- this wasn't the term you used -- it
4 affected your credit, thereby preventing you from engaging in
5 other business opportunities. That's not going to be part of
6 this trial.

7 So what I was reluctant to do -- I was aghast when I
8 saw your letter saying that you anticipated twenty-seven fact
9 witnesses. Whether you need three experts or not, I'm not
10 prepared to say, okay? That isn't the focus of my concern for
11 now. But I will tell you, we're going forward on the schedule
12 that I set.

13 You will look at your list again and if you, in good
14 faith, believe that all twenty-seven fact witnesses relate to
15 facts concerning this specific property and your losses
16 resulting from it, the trust can go ahead and take their
17 depositions, okay?

18 But here is what I am going to require of each side at
19 this point. First, with respect to the mediation request, I'm
20 a big believer in mediation, but I also believe the parties
21 have to be sufficiently close where a mediator can bridge the
22 difference. That's point one.

23 Second, it's important that not only your claim, that
24 all of the remaining claims be resolved as soon as possible.
25 So I'm going to deny your request to compel mediation. We're

1 going to go forward with the contested evidentiary hearing on
2 the schedule that I've set.

3 What I am going to require, and I know that Mr.
4 Wishnew said he disclosed to you the one witness that the trust
5 intends to call, but I am going to require that each side
6 provide the other by Thursday of this week, 5 p.m. Thursday,
7 with the identity of the witnesses -- it sounds like you've
8 each done that; last known business or residence address -- I
9 didn't require that previously, so you weren't obligated to
10 give it before but I am going to require it now, Mr. Reed; a
11 short narrative statement of the expected direct testimony of
12 each witness, so that -- and that's not a lengthy document but
13 I want each of you to know the subjects and briefly, the
14 expected testimony of the fact witnesses. On that basis, the
15 trust can decide who it wants to depose and who not.

16 I'm making clear that any fact witnesses you call, Mr.
17 Reed, will only be permitted to give testimony relating to this
18 specific property, wrongful foreclosure -- I'm shorthanding
19 that -- the debtors' efforts to foreclose on the property, any
20 economic losses that you believe were caused by such wrongful
21 conduct, if the witness is providing evidence with respect to
22 that.

23 With respect to the experts, do you have -- I thought
24 you had said at the last hearing that you had expert reports.
25 I am not clear on that, Mr. Reed.

1 MR. REED: That was one of them but, you know, he's
2 related to credit and -- which relates to other business issues
3 and this house.

4 THE COURT: Okay. That's not going to happen, Mr.
5 Reed. I'm telling you right now. So you can go back and
6 rethink how many experts you need. I will only hear testimony
7 from fact or expert witnesses that relate specifically to this
8 property: wrongful foreclosure, damages suffered as a result,
9 damages relating to this property -- economic or other damages
10 relating to this property. I'm not going to hear testimony
11 about what you believe was the impact of this alleged wrongful
12 foreclosure.

13 In part, Mr. Reed, the Court, and like I said, made
14 comments about this at the hearing, you haven't paid a single
15 mortgage payment since -- I'm blanking on the date -- 2009, I
16 don't know, somewhere in --

17 MR. REED: And may I address that?

18 THE COURT: No, not yet.

19 MR. REED: Well --

20 THE COURT: Not yet.

21 MR. REED: Okay.

22 THE COURT: Okay. So if you're unhappy with the
23 outcome at the end, you'll have your appellate rights, but
24 that's what's happening. Okay.

25 So the other thing I was reluctant to do until I saw

1 that you wanted to call thirty witnesses is we're going to do
2 this as what I refer to as a timed trial. Let me explain what
3 that is.

4 I am allocating to each side six hours to each side
5 over the course of two days. You have six hours to use for all
6 opening statement, direct examination, and cross-examination of
7 witnesses and closing argument. The trust, likewise, has six
8 hours. You use it as you wish. You will be advised after each
9 morning -- halfway through the morning when we take a break,
10 lunch time, mid-afternoon, how much time you've used, how much
11 time you have left.

12 I believe I am quite familiar with what underlies this
13 matter and I think that twelve hours for the whole hearing is
14 more than ample time for the presentation of all of the
15 evidence with respect to this dispute.

16 Now, with respect to exhibits, I've already provided
17 when they're supposed to be exchanged. Mr. Wishnew, I fully
18 expect that where there is no reasonable basis to dispute
19 authenticity of the documents, that you're going to
20 stipulate -- relevance is going to be confined to what I've
21 said. It's got to relate to this specific property, not
22 whatever business ventures Mr. Reed thinks were hindered by the
23 foreclosure efforts with respect to this property.

24 But if it relates to this property, I fully anticipate
25 that the trust will bend over backwards to assure that I'm not

1 going to have to hear foundational testimony through the
2 admission of documents.

3 MR. WISHNEW: Understood, Your Honor.

4 THE COURT: Mr. Reed, you wanted to respond to some
5 comments I made. I asked you to wait until I had finished but
6 go ahead, you've got the floor.

7 MR. REED: Thank you, Your Honor. To the comment that
8 was made in court and today about the years of nonpayment of
9 the mortgage, there is no -- I have to say this and I want you
10 to think about what I am going to say because you've jumped on
11 me many times and I can appreciate what it appears to be for
12 you and I think that I'm not -- I'm chasing a headwind in
13 regard to the overall damage that has occurred to me. So
14 perhaps it is an appellate matter.

15 But to that -- setting that aside, at the end of the
16 day, there is a bill that has to be paid. It's being presented
17 by the noteholder now. It will be paid in one way or another,
18 one fashion or another. My intention is not to go bankrupt
19 over this. It's like staying at a hotel for a week. When you
20 check out, you have to pay. There's been no economic benefit
21 to me. As a matter of fact, it's been harmful because there
22 are penalties, interest, interest upon interest, and it all
23 would not have occurred but for this situation.

24 So it's very frustrating and -- to hear it. I hear
25 what you're saying. I understand it.

1 But in this case, I -- it is not relevant,
2 appropriate. It's -- I don't think it makes any sense, because
3 it's not -- I did not get a free lunch. If you're suggesting
4 that I sat in the house for six months and I will never have to
5 pay that, that is not an appropriate statement, you know,
6 the -- at all. And it just is -- I mean, if the noteholder's
7 going to forgive my debt, sure, then I've gotten a free ride,
8 perhaps.

9 I don't think so, because it's been at the expense of
10 other things. But I -- it's just -- that's what I wanted to
11 respond to. It's not --

12 THE COURT: Let -- and that's fine, Mr. Reed. I want
13 to make one thing clear to the debtor -- to the trust. If I
14 didn't think that you had asserted a viable claim for relief, I
15 would have sustained their objection to everything. I believe,
16 and that's what I wrote in the order, that you had properly
17 asserted a claim -- viable claim. Whether you recover, I don't
18 know. How much you recover, I don't know.

19 So we wouldn't be going -- I wouldn't be taking the
20 time to go through this exercise just for the sake of giving
21 you two more days in court. That's not what I'm trying to do,
22 Mr. Reed. I believe that you set out a proper basis for a
23 claim against the trust. They disagreed with that. They filed
24 objections. Obviously you could agree or disagree. I'm not
25 asking for your agreement with my ruling.

1 I found that you have properly asserted certain
2 claims: negligence claim; New Jersey Consumer Fraud Act claim;
3 possibly a breach of contract claim. You asserted a claim for
4 punitive damages based on actual malice. That survived. Okay?
5 So I obviously was persuaded by your arguments that you have
6 stated a claim.

7 What I'm trying -- what I'm saying clearly, and you
8 can disagree and if you're unsatisfied with the ultimate
9 outcome, you'll appeal. You have that right. But the issues
10 before me, I believe, and I'm determining, are properly focused
11 on whatever damages or injury you've suffered as a result of
12 the foreclosure action that the debtor commenced. Okay?

13 The New Jersey court dismissed their foreclosure
14 action for the reasons that it did. Okay? And I'm guided, in
15 part, by what that court did. Okay? So you have certain --

16 MR. REED: I'm sorry, I didn't hear that last
17 sentence.

18 THE COURT: The New Jersey court dismissed their
19 foreclosure action. And I'm guided, in part, by what the New
20 Jersey court did. You prevailed in getting the foreclosure
21 action dismissed. You've told me in court that you had a
22 lawyer and incurred legal fees in connection with that. I'm
23 not saying that that defines the limit of what potential
24 recovery would be.

25 If you've suffered economic loss that you can

1 demonstrate -- when I focus on the fact that you haven't paid
2 any mortgage payments, the reason I focus on that is -- and I
3 alluded to it in my written order -- I think it makes it not
4 impossible but much more difficult for you to recover any
5 other -- certain categories of damages.

6 I dismissed -- I sustained the objection to the
7 malicious prosecution claim, in part because I believe that the
8 record established that the debtors could properly commence
9 foreclosure. They obviously -- at least they certainly didn't
10 persuade the New Jersey court that they did it right, and
11 they've never persuaded me they did it right. They've never,
12 to this day -- and I think it probably is too late in the day
13 to come -- it is too late in the day to come forward and show,
14 oh, we just found the notice of intent to foreclose. We hadn't
15 found it for all these years, but now we found it. Okay?

16 The New Jersey court ruled on that already. So but --
17 okay. That's all I'm going to say about it now.

18 What I -- let me come back to what both sides need to
19 do. Okay. By Thursday at 5 o'clock, you need to disclose to
20 each other the names of the witnesses that you expect to call
21 at the trial and a brief narrative summary of the expected
22 direct testimony, so that you can each see what the subjects
23 are. It needs to relate to the facts surrounding the wrongful
24 foreclosure or damages that you believe you suffered as a
25 result of it.

1 On the debtors' part, they've told you who it is. I
2 expect them to tell you as well what the expected narrative
3 testimony is. It's brief, okay? And then you can decide if
4 you want to depose them.

5 Have you had any success in finding a lawyer, Mr.
6 Reed?

7 MR. REED: I'm sorry?

8 THE COURT: Have you had any -- when you were last
9 here you indicated you were trying to obtain -- find a lawyer
10 to represent you?

11 MR. REED: I actually do, Your Honor. I have someone
12 who wants to take it on contingency, who's appeared in your
13 court in the Enron matter. They're a nationally known
14 attorney.

15 THE COURT: Okay.

16 MR. REED: On contingency. His name is Barry
17 Himmelstein, and he has ECF registration active in your court.
18 And but he has a problem. His mother's dying of liver cancer,
19 they expect her to die in the middle of September, and he's
20 blocked out September to deal with his mother. And I don't
21 know -- I mean, I -- you know, he wants to do this. He's
22 reviewed it all. He's very engaged in it, and I told him, I
23 said I don't know what to say. He said -- you know, you were
24 very firm about that date, and he said well, tell the judge
25 that I want to do this, that I'm interested in doing this. And

1 he just wouldn't get on the phone with me today, because of
2 that -- that conflict. But he is -- you know, we have come to
3 economic terms. He has reviewed the file. He is -- he is a
4 bankruptcy and class action attorney of national standing. And
5 has, again, appeared in that court in Enron, and has active
6 ECF.

7 THE COURT: All right, Mr. Reed, if -- whether he's
8 going to be -- is interested in taking the case, now that I
9 have made clear what the permissible issues for recovery of
10 damages are, you need to talk to him about it. If the attorney
11 writes a letter to the Court and files it on ECF, give it to
12 the debtors' counsel -- the Trust's counsel, indicating that
13 he's prepared to appear on your behalf and prosecute the claim,
14 and without going into much detail, explain that because of a
15 serious family health issue, he is unable to do it -- conduct a
16 hearing in September, before he actually makes an appearance, I
17 will consider rescheduling the evidentiary hearing.

18 I'm not going to do it unless I have the commitment
19 from a lawyer that he is ready, willing, and able to undertake
20 this matter, and the only thing that prevents him from doing a
21 trial on September 15th and 16th is a serious health issue of a
22 family member and that he is prepared to appear on your behalf
23 and prosecute the claim if the evidentiary hearing is scheduled
24 for -- for better or worse, I mean, it's very hard, having
25 lived through this at various points myself, to know, when you

1 have a very seriously ill family member, what the course is
2 going to be.

3 But I will -- I'm not committing today, but I will
4 tell you -- what I'm not prepared --

5 MR. REED: I hear you and I --

6 THE COURT: What I'm not prepared to do is just do it
7 on -- adjourn it now, and maybe he'll appear and maybe he
8 doesn't appear. If I have something --

9 MR. REED: I agree.

10 THE COURT: -- in writing that says I'm ready,
11 willing, and able to do this, here's my problem about doing it
12 on the schedule you've set.

13 MR. REED: Your Honor, to that end, you had indicated
14 that I should tell him that it's limited to this property and
15 the damage relating to this particular property. What law may
16 I -- is there any law or doctrine that I might cite to him to
17 tell him why it would be limited to that?

18 THE COURT: Order the transcript --

19 MR. REED: You know, a discussion --

20 THE COURT: Order the transcript from today. I just
21 ruled.

22 In my view, Mr. Reed, any other damages would be
23 speculative and not recoverable in this action -- in this
24 claim. This relates to alleged wrongful foreclosure with
25 respect to a specific property. Any other -- in my view, any

1 other business opportunities you may have had, and maybe you
2 did, and I hope you did, is far too speculative to permit
3 recovery on the claims that survive on the basis they've
4 survived.

5 So I will give you until -- I'm not going to back off
6 in requiring by Thursday at 5 the exchange of the identity of
7 the witnesses to testify on the subjects that I've indicated
8 and the brief narrative summaries of the expected direct
9 testimony.

10 Do you believe you can have a letter from this
11 proposed counsel by Thursday at 5 as well?

12 MR. REED: I would hope so, because we communicate via
13 cell phone and e-mail. I would hope that he and I could talk
14 later tonight and into tomorrow and try and resolve this.

15 THE COURT: Okay. Then I'm going to set the Thursday
16 at 5 as the deadline also for that letter. If I don't have it,
17 we're going forward on the schedule that I've indicated.

18 Mr. Wishnew, when you get the list -- I mean, you just
19 have to fire ahead and if you want to take depositions, you
20 know how to do it. Serve the --

21 MR. REED: Your Honor --

22 THE COURT: -- serve them with subpoenas and take your
23 depositions.

24 MR. WISHNEW: One question, Your Honor. I mean, in
25 terms of -- we obviously would like the benefit of having

1 responses to our written discovery before we take depositions.

2 THE COURT: Well, the problem you have, Mr. Wishnew,
3 is you served written discovery, but the hearing's going to be
4 over before the responses to written discovery are due. So I
5 expect both sides -- I entered an order that specifically dealt
6 with providing -- exchanging documents each side anticipates
7 using at trial. I don't see the point in -- at this stage, in
8 lengthening the schedule, providing for written discovery.

9 So serve a trial subpoena for documents if you want.
10 That you don't have to -- you're not subject to the thirty-day
11 requirements.

12 MR. WISHNEW: Understood, Your Honor.

13 MR. REED: Well, I -- could you repeat that, Your
14 Honor, what you said?

15 THE COURT: Sure. On a contested matter, the Federal
16 Rules of Civil Procedure for the most part apply in a contested
17 matter. So the Federal Rules of Civil Procedure provide for
18 interrogatories, requests for admissions, requests for
19 production of documents. Those rules typically provide thirty
20 days to respond to a written request.

21 In light of the expedited schedule that the Court has
22 set, service of interrogatories now, does not permit sufficient
23 time -- the responses would be due after we have a hearing.
24 Yes, I could shorten time. But what I'm -- the way we're going
25 forward, if Mr. Wishnew wishes to take your deposition or other

1 depositions, then he can take the depositions.

2 With respect to production of documents, he can serve
3 a trial subpoena, and it's not going to be subject to the same
4 thirty-day requirement.

5 MR. REED: Oh, boy, I am very sorry. I don't know
6 what happened. I heard Federal Rules of Civil Procedure.

7 THE COURT: Okay, so you missed part of what I was
8 saying. I heard your question. And I won't go through it all
9 other than to say that Mr. Wishnew indicated he served written
10 discovery on you. Ordinarily you'd have thirty days to
11 respond, but your responses aren't going to be due until this
12 hearing is over.

13 If Mr. Wishnew wants documents from you, he can serve
14 a subpoena for the documents. Hopefully, you will just both of
15 you agree not to have -- at least as between you, not to have
16 to go the subpoena route, but I'm going to leave it to you.

17 Mr. Wishnew, take his deposition, if you want his
18 deposition. And as to the others, I'm ordering that the
19 identity of the witnesses confined to the issues I described,
20 Thursday at 5 o'clock. If you have prospective counsel lined
21 up and he sends a letter to the Court -- I would also ask that
22 you e-mail it to chambers. He ought to file it on ECF, if he
23 has an ECF number, but e-mail it to one of my law clerks so we
24 can see it.

25 Mr. Wishnew, if he has counsel ready, willing, and

1 able to take it, but for serious family health issue, you ought
2 to let us know whether you're prepared to consent to adjourning
3 the hearing to permit that. I'm not going to open up the
4 discovery -- don't think that that's going to be a door to
5 opening up interrogatories and other written discovery.

6 We're going to proceed with whatever discovery does
7 take place in the fashion that I've said. So an adjournment
8 will not alter that.

9 MR. WISHNEW: Understood, Your Honor.

10 THE COURT: All right. I expect to enter a written
11 order -- it'll be tomorrow when it gets entered, I think --
12 just simply referring to my rulings over the phone today, with
13 respect to the limited subjects of testimony at the trial, a
14 requirement that each side disclose the identity -- and I am
15 going to require the contact information. If it's going
16 forward on the schedule, I don't want people to have to -- I
17 don't Mr. Wishnew and the Trust to begin a search for where it
18 can find all of the witnesses that Mr. Reed has provided.

19 So I'm going to require that you provide last known
20 business or residential addresses for your witnesses, both fact
21 and expert.

22 MR. WISHNEW: Thank you, Your Honor. Your Honor, if I
23 may address one more question --

24 THE COURT: Sure.

25 MR. WISHNEW: -- which is the -- I'm not sure if

1 chambers has received the reconsideration motion that Mr. Reed
2 served on us Friday evening.

3 THE COURT: I haven't seen it. My law clerks are
4 indicating they have not seen it either.

5 MR. WISHNEW: Okay. Then I will hold my question
6 until chambers receives it.

7 THE COURT: Okay. We will look at it when we receive
8 it. I don't anticipate adjourning a hearing because of a
9 reconsideration motion.

10 MR. WISHNEW: Very good. Thank you.

11 THE COURT: Mr. Reed, anything else you want to raise
12 today?

13 MR. REED: Again, I'm sorry, the last sentence, you
14 don't expect to what?

15 THE COURT: I don't expect to delay the hearing in
16 light of --

17 MR. REED: Oh, okay.

18 THE COURT: -- a reconsideration motion.

19 MR. REED: Sure.

20 THE COURT: We'll --

21 MR. REED: Should I check, Your Honor, with FedEx on
22 that reconsideration motion, as it was guaranteed by 3 p.m.
23 Friday. So should I check on that? Is it allowed that you
24 would not have that?

25 THE COURT: No, because if you -- if you send it in

1 paper, which is ordinarily how you would send it, the clerks --
2 and the clerk office receives it, it then has to be scanned and
3 filed on ECF and so there's a time lag when pro se parties --
4 I'm not faulting you for that -- there's frequently a time lag
5 between the time that you send a paper document and it actually
6 gets scanned and then entered on the docket.

7 MR. REED: Is there something I should do to get on
8 that electronic?

9 THE COURT: Well, you can't. If you have a lawyer, he
10 will.

11 MR. REED: Okay.

12 THE COURT: Mr. Reed, I'm not faulting you for not
13 having your reconsideration motion. I just don't have it.

14 MR. REED: I understand, Your Honor.

15 THE COURT: Okay. All right.

16 MR. REED: Okay.

17 THE COURT: I encourage -- Mr. Wishnew, I encourage
18 you to keep communicating with Mr. Reed, see if you can resolve
19 as many of the factual issues -- look, I encourage you both to
20 enter into stipulated facts. It'll speed the hearing. And
21 also, obviously, as to the authenticity and/or admissibility of
22 documents.

23 Hopefully, we won't be spending trial time doing that,
24 unless there's a good-faith basis to believe that there's
25 questions as to authenticity of documents. Relevance issues

1 I'll rule on during the hearing. Okay?

2 MR. WISHNEW: Absolutely, Your Honor.

3 THE COURT: All right, we're adjourned.

4 MR. REED: Thank you.

5 MR. WISHNEW: Thank you, Your Honor.

6 (Whereupon these proceedings were concluded at 5:26 PM)

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I N D E X

RULINGS

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rulings made on the record of this call.		

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sharona Shapiro

SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CET**D-492

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Date: July 29, 2014